

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ANTHONY AMAKER,

Plaintiff,

v.

DECISION AND ORDER  
10-CV-0977

BRIAN S. FISCHER, et al.,

Defendants.

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The above-referenced case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. §636(b)(1)(B). Plaintiff, a prison inmate proceeding *pro se*, alleges a number of constitutional violations and other causes of action against defendants. Defendants, who include the New York State Department of Corrections as well as a number of prison officials and corrections officers, filed a motion to dismiss plaintiff's amended complaint for failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Dkt. No. 32) On August 27, 2014, Magistrate Judge Schroeder issued a Report and Recommendation recommending that defendants' motion to dismiss be granted in part and denied in part. (Dkt. No. 60) The time to file objections passed without any action from plaintiff. On September 24, 2014, this Court issued an Order adopting Magistrate Judge Schroeder's Report and Recommendation in full. (Dkt. No. 61)

Following issuance of the September 24, 2014 Order, plaintiff submitted a

late request for an extension of time to file objections to the Report and Recommendation. (Dkt. Nos. 63 and 64). On November 24, 2014, this Court issued an Order indicating that because plaintiff was proceeding *pro se*, his late request would be granted and the Court's previous Order would be stayed to allow plaintiff to file, and the Court to consider, objections to the Report and Recommendation. (Dkt. No. 65) After additional extensions of time were requested and granted, plaintiff filed objections to the Report and Recommendation on January 15, 2015. Defendants filed a response (Dkt. No. 73), and plaintiff filed a reply (Dkt. No. 79) on March 30, 2015. At that time, the Court deemed the matter submitted without oral argument.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review, and after reviewing the submissions of the parties, the Court adopts the proposed findings of the Report and Recommendation in their entirety.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendants' motion to dismiss is granted with respect to plaintiff's claims against defendants in their official capacities, except for plaintiff's claims for injunctive relief against defendants Commissioner Fischer and Deputy Commissioner LeClaire in their official capacities for expungement of misinformation relating to plaintiff's escape risk and disciplinary charges arising

from the November 11, 2011 cell search. Defendants' motion to dismiss claims against defendants Fischer, LeClaire, Bradt, Cartwright, Klodzinski, Buth, Brown, Cunningham, Leonard, Hendzel, Sharpe, and Cyren in their individual capacities is granted. In addition, the remainder of defendants' motion to dismiss is granted except with respect to the following claims: (1) denial of attendance at religious services against Deputy Superintendent Dolce and Captain Robinson; (2) retaliatory cell search on September 1, 2011 against C.O. Steck; (3) retaliatory denial of water and breakfast on September 1, 2011 against C.O. LaCappriuccia; (4) retaliatory cell search on November 11, 2011 against Sgt. Erhardt, C.O. Malik and C.O. Carney; (5) retaliatory denial of electricity on November 17, 2011 against C.O. Malik; (6) denial of meals on November 29, 2010 against C.O. Piadlo; (7) denial of sufficient access to the law library against Deputy Superintendent Dolce and C.O. Adamy; (8) expungement of false information in plaintiff's prison file regarding risk of escape against Deputy Superintendent Chappius and C.O. O'Connors; and (9) denial of due process in disciplinary hearing against Captain Robinson.

The matter is referred back to Magistrate Judge Schroeder for further proceedings.

SO ORDERED.

*Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: April 20, 2015